Russell Greer 689 Vine Street Murray, UT 84107 801-616-1067 russmark@gmail.com Pro Se Litigant

FILED U.S. DISTRICT COURT

2016 DEC -1 A 10:00

DISTRICT OF UTAH

DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH **CENTRAL DIVISION**

RUSSELL G. GREER,

Plaintiff

v.

GARY R. HERBERT, in his official capacity as Governor of the State of Utah; SEAN D. REYES, in his official capacity as Attorney General of the State of Utah:

SIM S. GILL, in his official capacity as District Attorney of the City and County of Salt Lake; JACKIE BISKUPSKI, in her official capacity as Mayor of the City of Salt Lake; BEN McADAMS, in his official capacity as Mayor of the County of Salt Lake: KATHY BERG, in her official capacity as Director of the Division of Commerce; JAMES ALLRED, in his official capacity as Business Licensing Manager for the City of Salt Lake; ROLEN YOSHINAGA, in his official capacity as Director of Planning and Development for the County of Salt Lake,

Defendants

MOTION TO ALLOW PROOF OF SERVICE TO BE FILED WITH THE COURT WITHOUT ORIGINAL **SUMMONS PURSUANT TO FRCP 4**

Case No.: 2:16cv01067

Judge: Dustin B. Pead

- 6. Per Federal Rules of Civil Procedure Rule 4(e), service is made and completed when the summons and the complaint is either (a) delivered to the individual personally, (b) left at individual's place of dwelling with a suitable person of age, or (c) delivered to an agent appointed by law to receive a summons. That rule was made complete when Stewart served individuals personally or made service to their agent. Id.
- 7. Furthermore, service was made well before the 90 day statutory period of serving defendants. FRCP 4(m). Therefore, defendants or any court clerk cannot complain that service was not made because Stewart has signed with his oath on the proof of service for each defendant the time, place and person to whom service was made to and thus the rule has been made complete.

RULE FRCP 4(1) IS VAGUE

8. Nowhere in the rules section does it state that an original summons must be turned in with the proof of service. In fact, the FRCP (I) states that only the proof of service must be made to the court. Plaintiff read this rule and instructed his process server accordingly. The statute is too vague to list any specifics or to list any possible errors. Turning to resources to clarify the confusion, Greer did not find anything that states an original summons must be turned in with the proof of service. The Federal Rules of Civil Procedure Manual, in its mention of Rule 4(1), states that a process server must submit an affidavit stating that service was made. It reads, "A process server's affidavit establishes a presumption of service." Federal Rules of Civil Procedure Manual, Rosenthal, Levi & Rabiej. Juris Publishing (2015). The website, Serve-Now, a well-regarded website for process

Case 2:16-cv-01067-DBP

- servers, when explaining what an Affidavit of Service is, doesn't mention a summons being with a proof of service. It only mentions what a proof of service is. What is an Affidavit of Service? (2011) (https://www.servenow.com/articles/133/affidavit-of-service).
- 9. To go to one last source of information, Plaintiff went to the Utah Courts website (utcourts.gov) and found nothing about original summons being filed with the proof of service. A cursory search in the Utah Code did not yield any results either. Therefore, Plaintiff and his Process Server served the defendants in good faith and followed the rules to the best of their understanding. The vagueness of the rules should not be held against Plaintiff for doing his best effort.

UNDUE HARDSHIP

- 10. Lastly, to serve the complaint and summons all over again would be an undue hardship on both Plaintiff and his process server. It is an undue hardship given the expense of printing off 8 copies of 37 pages. Also, the defendants are spread out over a two mile radius and would be tiresome for the process server who rides a bike. Further, many of the agents assigned to the defendants were rude to the process server.
- Logically speaking, it would not make any sense to serve the defendants all over 11. again since they were properly served, as previously established. It appears that some of the defendants have begun drafting responses to the Complaint. For instance, the Chief Policy Advisor with the District Attorney's office, Darcy Goddard, looked at Plaintiff's LinkedIn profile. This presumes that she or

somebody with Defendant Gill's office has begun a response. Therefore, sending them a Complaint to which they already have would cause confusion.

PRAYER FOR RELIEF

12. Plaintiff apologizes to the Court for not knowing the traditional filing procedure and therefore hopes that the Court can make this allowance. Plaintiff promises that he will seek clarifications for any procedure that he is not familiar with in the future.

Dated: November 30, 2016

RUSSELL G. GREER

Page 4 of 22

PRO SE LITIGANT

By: /s/Russell G. Greer/

CERTIFICATE OF SERVICE

I certify that on November 30, 2016, I served a copy of the MOTION TO ALLOW PROOF OF SERVICE TO BE FILED WITH THE COURT WITHOUT ORIGINAL SUMMONS PURSUANT TO FRCP 4 on the following via electronic mail. Since defendants have not given Greer direct email addresses, Greer sends the Motion to the following email addresses in good faith and because he has communicated with defendants' agents on the following email addresses before:

Sean Reyes via Yvette Rhodes: yrhodes@utah.gov

Governor Gary Herbert. His office said, on 11/22/2016, that the Attorney General's Office would handle the response so the email to Yvette Rhodes will count towards the governor's office as well.

Jackie Biskupski via mayor@slc.gov

Kathy Berg via kberg@utah.gov

Rolen Yoshinaga via Chris Preston: rpreston@slco.org

Sim S. Gill via districtAttorney@slco.org

Ben McAdams via mayor@slco.org

James Allred via james.allred@slcgov.com

Exhibit

fo	or the
District	of Utah
Russell G. Greer	
Plaintiff(s) v. Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga)) Civil Action No. 2:16cv01067)))
Defendant(s)) .
SUMMONS IN	A CIVIL ACTION
To: (Defendant's name and address) Ben McAdams Mayor of Salt Lake County 2001 State St N2100 Salt Lake City, Utah 84190	
A lawsuit has been filed against you.	
are the United States or a United States agency, or an offic	you (not counting the day you received it) — or 60 days if you eer or employee of the United States described in Fed. R. Civ. swer to the attached complaint or a motion under Rule 12 of on must be served on the plaintiff or plaintiff's attorney,
If you fail to respond, judgment by default will be You also must file your answer or motion with the court.	entered against you for the relief demanded in the complaint.
	CLERK OF COURT
Date:	
	Signature of Clerk or Deputy Clerk

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

	This summons for (name of individual and title, if any) Bey McAdows
was rec	seived by me on (date) $\frac{1}{20/16}$
	☐ I personally served the summons on the individual at (place)
	on (date) ; or
	☐ I left the summons at the individual's residence or usual place of abode with (name)
	, a person of suitable age and discretion who resides there,
	on (date), and mailed a copy to the individual's last known address; or
	I served the summons on (name of individual) Stephanie Withers , who is
	designated by law to accept service of process on behalf of (name of organization) $MANDYS$ of file $A+Q:23am$ on (date) $1/21/16$; or
	☐ I returned the summons unexecuted because ; or
	Other (specify):
	My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ $0.00-7.50$.
	I declare under penalty of perjury that this information is true.
Date:	11/21/16 Server's signature
	Stewart Greer / courier Printed name and title
	761 wayne Ct. SCC UT. Server's address

Date:

	for the
Distric	t of Utah
Russell G. Greer	
Plaintiff(s) v. Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga) Civil Action No. 2:16cv01067)))
Defendant(s))
SUMMONS IN	N A CIVIL ACTION
To: (Defendant's name and address)	Gary R. Herbert 350N State Street # 200 Salt Cake City UT. 84114
A lawsuit has been filed against you.	
are the United States or a United States agency, or an offi	you (not counting the day you received it) — or 60 days if you icer or employee of the United States described in Fed. R. Civ. Inswer to the attached complaint or a motion under Rule 12 of ion must be served on the plaintiff or plaintiff's attorney,
If you fail to respond, judgment by default will b You also must file your answer or motion with the court.	e entered against you for the relief demanded in the complaint.
	CLERK OF COURT

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

☐ I personally served the summor	s on the individua	1 at (place)			
		on	(date)		; or
☐ I left the summons at the indivi-	dual's residence or	r usual plac	e of abode wit	1 (name)	
	, a pers	son of suita	ble age and dis	cretion who res	sides there,
	nd mailed a copy to				
I served the summons on (name of designated by law to accept service at [2]	of individual)	Suze	Healles		, w
designated by law to accept service	ce of process on be	ehalf of (nar	ne of organization	Office O	ft66
at 12:	:10pm	or or	(date) [[]	21/16	_ ; or
☐ I returned the summons unexec	uted because			•	
☐ Other (specify):					
		_			
My fees are \$ for	travel and \$	7.50	for services,	for a total of \$	0.00
I declare under penalty of perjury	that this informati	on is two			
r decrare under penanty or perjury	mat uns mioiman	on is true.			
11/21/16			7	_	
11/01/16		>	Server's	signature	
		Sten	just 6	eer /	Courie
	<u></u>	2100	Printed na	ne and title	

for	the
District of	of Utah
Russell G. Greer	
Plaintiff(s) v. Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga) Civil Action No. 2:16cv01067))))
Defendant(s))
SUMMONS IN A	A CIVIL ACTION
To: (Defendant's name and address)	Sean D. Reyes 350 N State Street #230 Seltlake City Ut 84114
A lawsuit has been filed against you.	
are the United States or a United States agency, or an office	ou (not counting the day you received it) — or 60 days if you er or employee of the United States described in Fed. R. Civ. wer to the attached complaint or a motion under Rule 12 of n must be served on the plaintiff or plaintiff's attorney,
If you fail to respond, judgment by default will be You also must file your answer or motion with the court.	entered against you for the relief demanded in the complaint.
	CLERK OF COURT
Date:	

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

☐ I personally se	erved the	summons on the indiv	idual at <i>(place)</i>		
 .			on (d	late)	; or
☐ I left the sum	nons at th	e individual's residenc	ce or usual place	of abode with (name)	
				e age and discretion w	
				ual's last known addre	ss; or
I served the si	ımmons o	n (name of individual)	CECILIA	LESMES	, who
designated by la	w to acce	pt service of process o	n behalf of (name	of organization) UTAH	ATTORNEY GENERA
·	at	12:04 pm	on (late) 11/21/16	; or
☐ I returned the	summons	unexecuted because			; (
☐ Other (specify).	•				
				·	
N C		0 1 10	A		1 (0)
My fees are \$		for travel and \$	1.50	for services, for a total	1 of \$ <u>0.00</u> 7.
I declare under p	enalty of	perjury that this inform	nation is true.		
1 1				,	
11/21/16					
/ '			_	Server's signature	/
			Ster	Nart Greev Printed name and title	/ Courier

for	the .
District of	f Utah
Russell G. Greer)	
Plaintiff(s) V. Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga Defendant(s)	Civil Action No. 2:16cv01067
SUMMONS IN A	CIVIL ACTION
To: (Defendant's name and address) St	Jackie Biskupski 451 s State Salt Lake City UT. 84114
A lawsuit has been filed against you.	
Within 21 days after service of this summons on you are the United States or a United States agency, or an officer P. 12 (a)(2) or (3) — you must serve on the plaintiff an answ the Federal Rules of Civil Procedure. The answer or motion whose name and address are: Russell G Greer 689 Vine Street Murray, Utah 84107	ver to the attached complaint or a motion under Rule 12 of
If you fail to respond, judgment by default will be e You also must file your answer or motion with the court.	ntered against you for the relief demanded in the complaint.
	CLERK OF COURT
Date:	
	Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

This summons for (name of individual and title, if eived by me on (date) $\frac{1}{20}$		CITY RECORDER
☐ I personally served the summons on the ir		OH HEOOHDEI
	on (date)	; or
\square I left the summons at the individual's residual	dence or usual place of abode w	ith (name)
	, a person of suitable age and c	liscretion who resides there,
on (date), and mailed	a copy to the individual's last k	nown address; or
I served the summons on (name of individual) and ce Fa	
I served the summons on (name of individual designated by law to accept service of proce	ess on behalf of (name of organizati	on) Salt Lake City
11:00 ar	on (date) [[21/16 ; or
☐ I returned the summons unexecuted becau		
☐ Other (specify):		
My fees are \$ \(\frac{1}{2} \) for travel and	d \$ 7.50 for service	s, for a total of \$ 0.00
	101 561 1100	υ, τοι α τοιαί οι φ
I declare under penalty of perjury that this in	aformation is true.	
11/21/16	(5) 6	
	Server	's signature
	Stewart (Sveen / courie
	Printed 1	s signature Veev Courie

for	r the
District of	of Utah
Plaintiff(s) V. Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga Defendant(s)))))) Civil Action No. 2:16cv01067))))
SUMMONS IN	A CIVIL ACTION
To: (Defendant's name and address) i ity	Kathy Berg 160 e 300 s Ind Floor Salt Lake City UT, 84114
A lawsuit has been filed against you.	ou (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an office	er or employee of the United States described in Fed. R. Civ. wer to the attached complaint or a motion under Rule 12 of
If you fail to respond, judgment by default will be You also must file your answer or motion with the court.	entered against you for the relief demanded in the complaint. CLERK OF COURT
Dotor	
Date:	Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

	This summons for (name of individual and title, if any) Kathy Berg served by me on (date) 11/20/16.
was rec	cerved by the on (date) 1/20/16.
	☐ I personally served the summons on the individual at (place)
	on (date) ; or
	☐ I left the summons at the individual's residence or usual place of abode with (name)
	, a person of suitable age and discretion who resides there,
	on (date), and mailed a copy to the individual's last known address; or
	I served the summons on (name of individual) Lean Lindstrom, who is
	I served the summons on (name of individual) Lean Limbstrom , who is designated by law to accept service of process on behalf of (name of organization) Div of Components on (date) 11-21-20/10; or
	☐ I returned the summons unexecuted because ; or
	□ Other (specify):
	My fees are \$ \mathcal{O} for travel and \$ 7.50 for services, for a total of \$ 0.00 7.50
	I declare under penalty of perjury that this information is true.
Date:	11 21/16 Server's signature
	Stewart Greev (couvier Printed name and title
	261 Woryne ct. Sult Lake City

f	for the
District	t of Utah
Plaintiff(s) V. Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga Defendant(s))))) Civil Action No. 2:16cv01067)))
SUMMONS IN	A CIVIL ACTION
To: (Defendant's name and address)	Rolen Yoshinaga 2001 5 State street ste N3-600 Salt Lake City UT. 84190
are the United States or a United States agency, or an office	you (not counting the day you received it) — or 60 days if you cer or employee of the United States described in Fed. R. Civ. aswer to the attached complaint or a motion under Rule 12 of ion must be served on the plaintiff or plaintiff's attorney,
689 Vine Street Murray, Utah 84107 If you fail to respond, judgment by default will be You also must file your answer or motion with the court.	e entered against you for the relief demanded in the complaint.
	CLERK OF COURT
Date:	

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

	on (date)	; or
☐ I left the summons at the indiv	vidual's residence or usual place of abode with	
	, a person of suitable age and di	
on (date) , a	and mailed a copy to the individual's last kno	
I served the summons on (name	e of individual) Britany Aller	, who
designated by law to accept servi	ice of process on behalf of (name of organization 9:16 am on (date)	Danning & Davela
Services at	9:16 am on (date) 11	21/10 ; or
☐ I returned the summons unexe	ecuted because	;
☐ Other (specify):		
(155)		
	or travel and $\$$ 7. $\$\mathcal{O}$ for services.	for a total of \$ 0.00
My fees are \$ 0 fo		
		•
My fees are \$ for I declare under penalty of perjury		
I declare under penalty of perjury		
I declare under penalty of perjury	y that this information is true.	signature
	y that this information is true.	signature veer/courier

Date:

	tne .							
District o	f Utah							
Russell G. Greer								
Plaintiff(s) V.	Civil Action No. 2:16cv01067							
Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga)							
Defendant(s)								
SUMMONS IN A CIVIL ACTION								
To: (Defendant's name and address)	James Allred 4515 State Street #225 Salt Lake City Ut 84114							
A lawsuit has been filed against you.								
Within 21 days after service of this summons on yo are the United States or a United States agency, or an office P. 12 (a)(2) or (3) — you must serve on the plaintiff an answ the Federal Rules of Civil Procedure. The answer or motion whose name and address are: Russell G Greer 689 Vine Street Murray, Utah 84107	ver to the attached complaint or a motion under Rule 12 of							
If you fail to respond, judgment by default will be early ou also must file your answer or motion with the court.	entered against you for the relief demanded in the complaint.							
	CLERK OF COURT							

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (1))

☐ I personally ser	rved the summons on the	individual at (plac	Dept F con	minity an	d economial Dust ZZ	12 E
	rved the summons on the $4:46$ a	m	on (date)	1/21/16	; or	
	nons at the individual's res					
		, a person of si	uitable age an	d discretion who	resides there	,
on (date)	, and mailed	d a copy to the inc	dividual's last	known address;	or	
☐ I served the sur	mmons on (name of individue	al)				, who
designated by law	v to accept service of proc	cess on behalf of	(name of organiz	ation)		
			on (date)		; or	
☐ I returned the s	summons unexecuted beca	ause				;
☐ Other (specify):		***************************************				
My fees are \$	6 for travel ar	nd \$ 7.50	for servi	ces, for a total o	f\$ <u>0.0</u>	0-7
I declare under per	enalty of perjury that this i	information is tru	ie.			
11/21/16		Sta	nout (9ree /		
		Stew	vart (ver's signature Control ed name and title	/Couri	er

Date:

for	the
District of	of Utah
Russell G. Greer))))
Plaintiff(s) V. Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga Defendant(s)) Civil Action No. 2:16cv01067)))))
	A CIVIL ACTION
To: (Defendant's name and address Salt Lake City, Utah 84190	Sim S. Gill 2001 South State St. S3-600 Salt Lake City, Utah 84190
A lawsuit has been filed against you.	• •
are the United States or a United States agency, or an office	ou (not counting the day you received it) — or 60 days if you er or employee of the United States described in Fed. R. Civ. wer to the attached complaint or a motion under Rule 12 of a must be served on the plaintiff or plaintiff's attorney,
If you fail to respond, judgment by default will be a You also must file your answer or motion with the court.	entered against you for the relief demanded in the complaint.
	CLERK OF COURT

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

FILED SALT LAKE **COUNTY CLERK**

PROOF OF SERVICE

This summons for (name of individual and title	e. if any) Sind S (- 11	Deputy Cle
beived by me on (date) $(1/20/6)$	·	2/11	
(1)			
☐ I personally served the summons on the	e individual at (place)		
	on (date)	; or	
\Box I left the summons at the individual's r	residence or usual place of abode	with (name)	
	, a person of suitable age an	d discretion who resides th	ere,
on (date) , and maile	ed a copy to the individual's last	known address; or	
I served the summons on (name of individ	dual) Lovie (h	ase-	, who
designated by law to accept service of pro-	ocess on behalf of (name of organiz	ation) Morriogo a.	- Da
I served the summons on (name of individed designated by law to accept service of proceed that I service the service of proceed that I service the service of proceedings and the service of proceedings and the service of proceedings and the service of proceedings are serviced to the service of proceedings and the service of proceedings are serviced to the service of the service of the service of proceedings are serviced to the service of	:06 am on (date)	1/21/16 ; or	
☐ I returned the summons unexecuted be		•/	; (
·			, `
☐ Other (specify):			
My fees are \$ O for travel	and s 7 SA for commi	and for a total of \$	7
ioi traver	and $$7.50$ for servi	ces, for a total of \$	0.00- /·
I declare under penalty of perjury that this	s information is true.		
a second conday pommely of perjory some con-	2		
11/21/16	C = C		
(1) 2 / (0)	Serv	ver's signature	
	Stewart Gr	reer /courie	
		ed name and title	